IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6628 OF 2004

Poraje Dhanaji Namdeo ...Petitioner

Versus

Nashik Road Deolali Vyapari

Sahakari Bank Ltd. & Ors. ...Respondents

.....

Mr.U.P.Warunjikar for Petitioner.

Mr.K.S.Patil i/b Mr.P.N.Joshi for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 30, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. According to Mr.Warunjikar for Petitioner, instead of dismissing the application for condonation of delay on the ground of default of the Petitioner and his Advocate, the Court has decided the matter on merits. I find no substance in this submission. On fair reading of the order, in particular, Para 3, it clearly indicates that

the Court has dismissed the application for default, as it is recorded that the applicant and his Counsel are absent. It is also recorded that the Counsel appearing for the Respondent No.1 insisted that the Application be dismissed. Viewed in this perspective, the order will have to be read as the application for condonation of delay has been dismissed for default.

3. Mr.Warunjikar for Petitioner submits that there was sufficient cause for the absence of the Petitioner and his Advocate. However, no cause whatsoever has been made out in the Petition, except, saying that there was communication gap. It is conceded that the Petitioner is a practising Advocate. The excuse given, as mentioned earlier, is vague, cannot be stated to be sufficient cause.

4. It is obvious that the Petitioner is trying to protract the proceedings. The fact that the Petitioner has availed of loan facility to the extent of Rs.12,00,000/- (Rupees Twelve Lakhs) from the Respondent Bank is not in dispute. According to the Respondent No.1 Bank, the amount with

interest has now swelled to around Rs.26,00,000/- (Rupees Twenty-six Lakhs) and the Petitioner has not offered any amount, except initial payment of Rs.29,000/- (Rupees Twenty-nine Thousand) in the year 2002. The ex-parte award has been passed against the Petitioner as back as on 16th July 2001. Eventually the Bank had to take recourse against the guarantors, but Counsel for the Respondent No.1 Bank submits that even the guarantors have preferred appeal and stalled the entire recovery procedure.

5. Be that as it may, offer was made to the Petitioner that if he pays the requisite amount or gives undertaking to repay the said amount within a reasonable period, the Respondent Bank can be persuaded to consider to give some time to the Petitioner for repayment. In response, learned Counsel for Petitioner, on instructions of the Petitioner, who is personally present in the Court, offers that the Petitioner will pay only a sum of Rs.2,00,000/- (Rupees Two Lakhs) in two instalments of four weeks each. The offer made on behalf of the Petitioner is not acceptable to the

Respondents, as according to them, the total outstanding is around Rs.26,00,000/- (Rupees Twenty-six Lakhs) and the admitted principal amount is Rs.12,00,000/- (Rupees Twelve Lakhs). Petitioner is not willing to make any commitment with regard to remaining principal amount. Hence, it is not possible to accede to the request made on behalf of the Petitioner. Petition dismissed.

A.M.KHANWILKAR, J.